

REMARKS

In the Office Action¹ dated April 12, 2010, the Examiner:

- Rejected claim 67 under 35 U.S.C. § 112, second paragraph; and
- Rejected claims 19, 21, 23-26, 33-35, 37, 38, 43, 44, 46, 47, 49-67, and 69-70 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0080491 A1 to Takatsuka et al. (“Takatsuka”) in view of U.S. Patent No. 6,864,679 B2 to Yokoji et al. (“Yokoji”).

By this Amendment, Applicant cancels claim 67 without prejudice or disclaimer.

Claims 19, 21, 23-26, 33-35, 37, 38, 43, 44, 46, 47, 49-66, and 69-70 are currently pending, and the rejections of claim 67 are rendered moot by the cancellation.

Rejection under 35 U.S.C. § 112, second paragraph

As noted above, the rejection of claim 67 under 35 U.S.C. § 112, second paragraph is rendered moot by the cancellation of this claim. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 112 rejection.

Rejection under 35 U.S.C. § 103(a)

The rejection of claim 67 under 35 U.S.C. § 103(a) has been rendered moot by the cancellation of this claim.

Applicant respectfully traverses the rejection of claims 19, 21, 23-26, 33-35, 37, 38, 43, 44, 46, 47, 49-66, and 69-70 under 35 U.S.C. § 103(a) because Takatsuka cannot be relied upon as prior art to support the 35 U.S.C. § 103(a) rejection.

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement of characterization in the Office Action.

35 U.S.C. § 103(c)(1) states that:

[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, **shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.** (Emphasis added).

Applicant's application was filed on July 19, 2005 and claims priority from:

PCT/JP04/00272, filed on January 16, 2004 and Japanese Patent Application No. 2003-011291, filed on January 20, 2003. In view of these applications, the effective priority date of Applicant's application is January 20, 2003.

Takatsuka was published on April 29, 2004, which is after both of Applicant's priority dates of January 26, 2004 and January 20, 2003. Accordingly, Takatsuka does not qualify as prior art against Applicant's application under 35 U.S.C. §§ 102(a) or (b).

Takatsuka appears to qualify only under 35 U.S.C. § 102(e). Further, Takatsuka was commonly owned with the instant application by the same person or was subject to an obligation of assignment to the same person at the time of Applicant's application. See e.g., Takatsuka assignment recordation, Reel/Frame Nos. 014868/0552 and instant application assignment recordation, Reel/Frame No. 017182/0303. A record of these assignments is enclosed. Thus, pursuant to 35 U.S.C. § 103(c), Takatsuka cannot be relied upon to reject claims 19, 21, 23-26, 33-35, 37, 38, 43, 44, 46, 47, 49-66, and 69-70 under 35 U.S.C. § 103(a).

Moreover, Yokoji alone fails to render obvious each and every feature of the claims. See concessions on Office Action, pages 4 and 6.

Accordingly, for at least the reasons noted above, the 35 U.S.C. § 103(a) rejection of claims 19, 21, 23-26, 33-35, 37, 38, 43, 44, 46, 47, 49-66, and 69-70 is improper and should be withdrawn.

Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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By: /John M. Romary/

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Attachments to this Amendment include:

USPTO Assignment record of U.S. Patent Publication No. 2004/0080491 A1; and

USPTO Assignment record of U.S. Patent Application No. 10/542,643.

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